

Remarks

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Claims 24-31 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,764,692 (Lowenstein) in view of U.S. Patent No. 5,536,516 (Moffett, et al.) and McCarty (45 Medical Hypotheses 247-54 (1995)). (The Examiner stated that claims 32-39 were rejected for these reasons. However, in light of the Examiner's separate rejection of claims 32-39 and reference to the previous rejection of claims 24-31 (Off. Act. 6/28/00, pg. 3), Applicant assumes that the Examiner's first ground of rejection applies to claims 24-31 only.)

Applicants respectfully traverse this rejection.

The Examiner concedes that Lowenstein and Moffett do not teach the use of (-)-hydroxycitric acid (HCA) for increasing athletic endurance. The Examiner alleges, however, that McCarty shows that HCA acid can be administered to increase exercise endurance. The Examiner argues that McCarty's hypotheses is backed by strong reasoning based on the literature in the art, and provides a strong enough case for one skilled in the art to expect that (HCA) would increase exercise endurance. The Examiner also dismisses the Dohm reference because it does not mention HCA.

Applicants respectfully disagree with this interpretation of McCarty and Dohn.

McCarty's hypothesis is that because HCA, by inhibiting citrate lyase, reduces the generation of acetyl CoA in the liver, the reduced acetyl CoA complements the ability of glucagon to promote gluconeogenesis. McCarty further hypothesizes that glycogen is accumulated in the liver and this accumulation *may aid aerobic endurance*.

Dohm, however, teaches that increased fatty acid utilization, which results from lower glycogen levels in the liver, promotes aerobic endurance. Thus, although Applicant agrees that one skilled in the art could imagine that promoting

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gluconeogenesis may enhance exercise endurance, Dohm teaches that McCarty's hypothesis is groundless. The fact that Dohm does not mention HCA is irrelevant to Dohm's conclusion.

Applicants note McCarty's selective use of references, in particular Brunengraber, et al., 82 Eur. J. Biochem. 373-84 (1978), cited as Reference No. 48 by McCarty. This paper shows that the administration of HCA to livers of fed rats increased the concentrations of the glycolytic intermediates glucose 6-phosphate and fructose 6-phosphate, while decreasing the concentrations of all other intermediates. These results are convincing because HCA, by promoting the accumulation of citric acid, inhibits the enzyme phosphofructokinase. Thus, any glucose produced by the action of HCA will not enter into the TCA cycle via glycolysis due to the inhibition of phosphofructokinase by HCA. Therefore, even if glucose is produced gluconeogenesis, that glucose is not available as an energy source and cannot enhance exercise endurance. Those skilled in the art of biochemistry will realize that McCarty focuses only on one aspect of the function of HCA, and that his arguments are speculative. McCarty's paper is based on an incomplete understanding of the functioning of HCA, and would not teach one skilled in the art to reasonably expect that HCA would increase exercise endurance.

Thus, Applicants urge that claims 24-31 are not obvious in light of Lowenstein, Moffett, and McCarty, and respectfully request reconsideration and withdrawal of this rejection.

Claims 32-39 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,764,692 (Lowenstein) in view of U.S. Patent No. 5,536,516 (Moffett, et al.) and McCarty (45 Medical Hypotheses 247-54 (1995)).

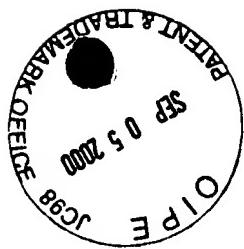
The Examiner argued that food is a pharmaceutically acceptable carrier and that it is obvious to mix a pharmaceutical with food.

Applicant has canceled claims 32-39 and added claims 40-41 reciting food as a limitation on the composition of claims 24-25. Claims 40-41 are dependent on claims 24-25, and are therefore allowable for at least the reasons that claims 24-25 are allowable. Reconsideration and withdrawal of this rejection is respectfully requested.

It is submitted that claims 24-31, and new claims 40-41 are in condition for allowance. Early and favorable action by the Examiner is earnestly solicited. If the Examiner believes that issues may be resolved by a telephone interview, the Examiner is respectfully urged to telephone the undersigned at (212) 848-1046. The undersigned may also be contacted by e-mail at erzucidlo@gj.com.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for this amendment, or credit any overpayment to Deposit Account No. 07-1855.



Respectfully submitted,

Greenberg Traurig, LLP

By:

  
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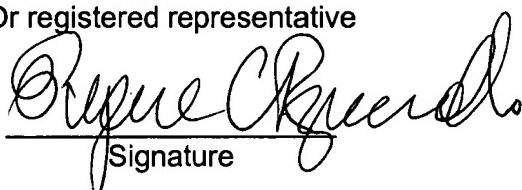
Date: September 1, 2000

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This is to certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on September 1, 2000.

Eugene C. Rzucidlo  
Name of applicant, assignee  
Or registered representative

  
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September 1, 2000

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